

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DELAWARE MARKETING	)	
PARTNERS, LLC, a Delaware	)	
limited liability company,	)	
Plaintiff	)	C.A. No.: 04 - 263 Erie
	)	
v.	)	Judge McLaughlin
	)	Magistrate Judge Baxter
CREDITRON FINANCIAL SERVICES,	)	
INC., a Pennsylvania corporation, and	)	
TELATRON MARKETING GROUP,	)	
INC., a Pennsylvania corporation,	)	
Defendants	)	TRIAL BY JURY DEMANDED

**DEFENDANTS' MOTION TO COMPEL DISCOVERY**

AND NOW, the Defendants, by and through their attorneys, ELDERKIN, MARTIN, KELLY & MESSINA, file the following Motion to Compel Discovery, respectfully representing as follows:

1. This is a contract action in which the Plaintiff seeks payment from the Defendants for services allegedly provided to Defendant under a written contract dated September 1, 2002. Defendants have asserted that Plaintiff failed to perform the services requested. *Answer, ¶9; Third Defense.*

2. Defendants are in the business of, among other things, securing customers for a lender for purposes of the issuance of student loans to consolidate existing student loans. The

Defendants perform this service by engaging in telemarketing and mail solicitations of persons who have more than one outstanding student loan.

3. Under the contract of September 1, 2002, the Defendants hired the Plaintiff to have Plaintiff obtain lists of names, telephone numbers and addresses to be used in the telemarketing and mail solicitations to be performed by the Defendants.

4. To fulfill these contractual obligations, the Plaintiff prepared and submitted written requests for such lists to ChoicePoint, a company which retrieves and stores vast amounts of credit data from various national credit agencies. It is Defendants' understanding that Plaintiff submitted approximately fourteen (14) separate requests to ChoicePoint over the course of the duration of the parties' contract.

5. The Plaintiff represented to the Defendants that the Plaintiff had expertise in defining and identifying the list selection criteria so as to obtain from ChoicePoint lists which would be of high quality in that the names pulled from the vast database would produce the highest rate of returns on the solicitations.

6. After several months of performing under the contract, the lists obtained by Plaintiff as a result of the criteria selection it had submitted to ChoicePoint, declined substantially in quality. The number of usable names and telephone numbers declined and the positive results of those who were called also diminished significantly. Although Plaintiff has denied it is

responsible for these poor results, Plaintiff has offered no viable explanation for the decline in performance.

7. It was this dramatic and unexplained decline in performance which, in part, led the Defendants to fail to pay the Plaintiff the amounts it currently claims are due and payable.

8. In discovery, the Defendants seek to obtain from the Plaintiff the actual selection criteria which the Plaintiff had submitted to ChoicePoint. A review of this selection criteria is needed in order for Defendants to determine the cause of the significant decline in the quality of the lists.

9. The Plaintiff has flatly refused to provide this information and has redacted the selection criteria information from those documents which have been produced. The Plaintiff has claimed that the list criteria is proprietary and, thus, need not be produced. Redacted documents include those bearing Bates numbers 76, 78, 95, 99, 106-108, 114, 118, 123, 160, 162, 195-198, 201, 206-208, 214, 217-218.

10. Despite its claim of proprietary concerns, the Plaintiff has not sought nor obtained a protective order to permit it to withhold this relevant material and information.

11. In any event, the Defendants have offered to sign a confidentiality agreement so as to protect any proprietary information which may be contained within the list criteria. The Plaintiff has flatly refused this request also.

12. The Defendants cannot defend against the Plaintiff's claims without obtaining and evaluating the list selection criteria.

WHEREFORE, the Defendants respectfully request this Honorable Court issue an order compelling the Plaintiff to produce the requested information and documentation.

Respectfully submitted,

ELDERKIN, MARTIN, KELLY & MESSINA

By /s/ Craig A. Markham, Esquire  
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